

6-217A033

AUG 4 1976
Date
Fee \$ 80 -

CC Washington, D. C.

RECORDATION NO. 8385-B Filed & Recorded

AUG 4 1976 - 1 20 PM

INTERSTATE COMMERCE COMMISSION

The Honorable Robert L. Oswald
Secretary
Interstate Commerce Commission
Washington, D. C. 20423

RECORDATION NO. 8385-A Filed & Recorded

AUG 4 1976 - 1 20 PM

INTERSTATE COMMERCE COMMISSION

My dear Mr. Oswald:

Re: Conditional Sale Agreement made as
of June 22, 1976, filed with the
ICC on June 28, 1976 at 11:20 a.m.
and assigned recordation number 8385

Enclosed for filing with the Interstate Commerce Commission are 15 executed Counterparts of the following documents. (10 Counterparts of document 2).

1. Amendment and Restatement of Conditional Sale Agreement dated as of July 30, 1976 to the Conditional Sale Agreement dated as of June 22, 1976, between FMC CORPORATION, a Delaware corporation ("Builder"), 200 East Randolph Drive, Chicago, Illinois 60601, and FIRST SECURITY BANK OF UTAH, N.A., 79 South Main Street, Salt Lake City, Utah 84110, a national banking association, not in its individual capacity but acting solely as trustee under a Trust Agreement dated as of June 22, 1976 with FMC Finance Corporation, 200 East Randolph Drive, Chicago, Illinois 60601.

2. Lease of Railroad Equipment dated as of June 22, 1976 between SSI RAIL CORP., a Delaware corporation, Two Embarcadero Center, San Francisco, California 94111 ("Lessee") and FIRST SECURITY BANK OF UTAH, N.A. ("Lessor").



RECORDATION NO. 8385-B Filed & Recorded

AUG 4 1976 - 1 20 PM

INTERSTATE COMMERCE COMMISSION

RECEIVED

AUG 4 1 15 PM '76

I. C. C.
FEE OPERATION BR.

August 3, 1976

RECORDATION NO. 8385-A Filed & Recorded

AUG 4 1976 - 1 20 PM

INTERSTATE COMMERCE COMMISSION

The Honorable Robert L. Oswald
Page 2
August 3, 1976

3. Agreement and Assignment dated as of July 30, 1976 between Builder, and MANUFACTURERS HANOVER TRUST COMPANY, a New York banking corporation, 350 Park Avenue, New York, New York 10022 ("Assignee").

4. Assignment of Lease and Guaranty dated as of July 30, 1976 by Lessor to Assignee.

The above documents cover the following railroad equipment with the A.A.R. mechanical designation of "XM."

100 70-ton boxcars built by FMC Corporation and numbered APA 1850 through 1949 inclusive.

100 100-ton box cars built by FMC Corporation and numbered APA 1700 through 1799 inclusive.

Each boxcar is plainly, distinctly, permanently and conspicuously marked on each side in letters not less than one inch in height as follows: Owned by a Company under a Security Agreement filed under the Interstate Commerce Act, Section 20."

The obligations of Lessee under the Lease of Railroad Agreement are guaranteed by ITEL Corporation, One Embarcadero Center, San Francisco, California 94111, the parent company of Lessee.

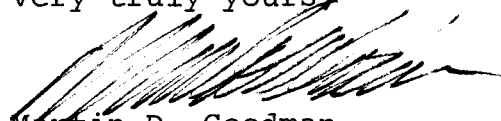
Also enclosed is my personal check in the sum of \$80.00 payable to the Interstate Commerce Commission being the prescribed fee for filing and recording the foregoing document.

Please return all additional copies of the enclosed counterparts not required by the Interstate

The Honorable Robert L. Oswald
Page 3
August 3, 1976

Commerce Commission to Allen H. Harrison, Jr. of Wilmer
Cutler & Pickering, who will be delivering this letter
on our behalf.

Very truly yours

A handwritten signature in dark ink, appearing to read "Martin D. Goodman", with a stylized flourish at the end.

Martin D. Goodman
Secretary

MDG:bsk
Enclosures

Interstate Commerce Commission
Washington, D.C. 20423

OFFICE OF THE SECRETARY

8/4/76

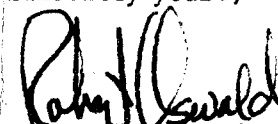
Martin D. Goodman
SSI Rail Corp.
Two Embarcadero Center
San Francisco, Calif 94111

Dear

The enclosed document(s) was recorded pursuant to the
provisions of Section 20(c) of the Interstate Commerce Act,
49 U.S.C. 20(c), on **8/4/76** at **1:20pm**
and assigned recordation number(s)

8385-A
8385-B
8385-C
8385-D

Sincerely yours,


Robert L. Oswald
Secretary

Enclosure(s)

SE-30
(5/76)

JUN 28 1976 11 22 AM

INTERSTATE COMMERCE COMMISSION

CONDITIONAL SALE AGREEMENT

This Conditional Sale Agreement is made as of June 22, 1976 between FMC Corporation, a Delaware corporation (hereinafter called Builder,) and First Security Bank of Utah, N.A., a national banking association, not in its individual capacity but acting solely as Trustee under a Trust Agreement dated as of the date hereof with FMC Finance Corporation (said trust company, so acting, being hereinafter called the Vendee and FMC Finance Corporation being hereinafter called the Beneficiary).

Whereas, Vendee desires to purchase from Builder and Builder desires to sell to Vendee 200 boxcars;

Whereas, the parties anticipate this Agreement will be assigned to a third party (hereinafter called the Assignee) and subsequently amended and modified by the Vendee and Assignee;

NOW THEREFORE, the parties agree:

1. Construction and Sale. Builder will construct the boxcars as set forth on Schedule A hereto, (such boxcars being hereinafter called the Equipment.) Builder will sell and deliver to Vendee and Vendee will purchase from Builder, accept delivery and pay for the Equipment. The design, quality and component parts of each unit of Equipment shall conform at delivery to all Department of Transportation and Interstate Commerce Commission requirements and specifications and to all standards recommended by the Association of American Railroads reasonably interpreted as being applicable to equipment of the character of such units. The Equipment will meet the Builder's Specifications as set forth on Schedule A hereto.

2. Inspection and Delivery. Builder will begin construction of the Equipment promptly and will begin delivery as soon as practicable. Builder will deliver the Equipment to Holbrook, Arizona.

During construction, the Equipment will be subject to inspection and approval by the authorized inspectors of the Vendee. Builder will grant the inspectors reasonable access to its plant. Builder will submit each unit to an inspector for inspection. If each such unit conforms to the specifications, requirements and standards applicable thereto, the inspector shall execute and deliver to the Builder a Certificate of Acceptance stating that such unit has been inspected and accepted on behalf of Vendee and is marked in accordance with Article 6 hereof, provided, however, that the Builder shall not thereby be relieved of its warranty provided in Article 9.

Upon delivery of each unit, the Railroad will assume the risk of any loss or damage to or destruction of such unit.

~~(\$36,000)~~

~~(\$3,600,000)~~

3. Purchase Price and Payment. The price will not exceed ~~\$18,000~~ per unit nor ~~\$3,600,000~~ per 100 units for the 100 ton boxcars and will not exceed ~~\$33,000~~ per ~~(\$34,000)~~ unit nor ~~\$3,300,000~~ per 100 units for the 70 ton boxcars, which price includes any freight charges. The purchase price shall be payable on demand, but not before four days after delivery of all of the Equipment. If payment shall not be then demanded, Vendee will pay interest at ten per cent per annum of the unpaid balance of the purchase price.

If Builder assigns the right to receive the payments to be made by the Vendee, the Assignee thereof may request the Vendee to make, and the Vendee shall make, such payment to Assignee.

4. Taxes. Vendee will pay all local, state, federal or foreign taxes (other than net income, gross receipts, [except gross receipts taxes in the nature of or in lieu of sales or use taxes,] excess profits and similar taxes) or license fees, assessments, charges, fines, or penalties hereafter levied or imposed upon or in connection with or measured by this agreement or any sale, use, payment, shipment, delivery or transfer of title under the terms hereof. Vendee will keep the Equipment free and clear of all such impositions which might in any way affect the title of the Builder.

5. Title to the Equipment. Builder hereby retains full legal title to and property in the Equipment until the purchase price shall have been paid in full.

Any and all additions to the Equipment, and any and all parts installed on and additions and replacements made to any unit of Equipment shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and included in the term, "the Equipment," as used in this Agreement.

Except as otherwise specifically provided herein, when Builder shall have been paid the purchase price in full, together with interest and all other payments as herein provided, and all Vendee's obligations herein contained shall have been performed, absolute right to possession of, title to, and property in the Equipment shall pass to and vest in the Vendee without further

transfer or action on the part of Builder. At such time Builder shall, at the request and expense of Vendee, execute to Vendee a bill of sale for the Equipment as is, where is, and without warranty of any kind except only that the Equipment is free from all liens and incumbrances created by Builder.

6. Marking of the Equipment. The Vendee will cause each unit of the Equipment to be numbered with its identifying number and the number of the ICC filing relating thereto. The Vendee will keep and maintain plainly, distinctly, permanently and conspicuously marked on each side of each unit, in letters not less than one inch in height, the words:

Owned by a Company under a Security Agreement filed under the Interstate Commerce Act, Section 20c

or other appropriate markings approved by the Builder. Vendee will make the changes thereof and additions thereto which may be required by law in order to protect the Builder's title to and property in the Equipment and its rights under this agreement. Vendee will not operate any unit until such markings have been made thereon and will replace promptly any such marking which may be removed, defaced or destroyed.

The identifying numbers shall be those set forth in Schedule A to this Agreement. Vendee will not permit the identifying number of any unit of Equipment to be changed except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been filed with Builder and filed, recorded or deposited on behalf of Vendee in all public offices where this Agreement shall have been filed, recorded or deposited. Except as provided in this paragraph, Vendee will not allow the name of any person, association or corporation to be placed on any unit of Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Lessee may cause the equipment to be lettered with the names or initials or other insignia customarily used by Lessee, its affiliates or its sub-lessees on railroad equipment used by them of the same or a similar type for convenience of identification.

7. Maintenance: Compliance with Laws and Rules. Vendee will cause the Equipment to be maintained in good order and repair at its own expense. Vendee will comply in all respects with all laws of the jurisdictions in which its operations involving the Equipment may extend, with the interchange rules of the Association of

American Railroads, and with all lawful rules of the Department of Transportation, Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment. If any such laws or rules require the alteration of any part on any unit of Equipment, the Vendee will conform therewith at its own expense.

8. Indemnities. Vendee will indemnify, protect and hold harmless Builder from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause, and expenses in connection therewith, including counsel fees, arising out of the retention by Builder of title to the Equipment or the use or operation thereof by Vendee, except any losses, damages, injuries, liabilities, claims and demands arising out of any tort, breach of warranty or failure to perform any covenant hereunder by Builder. This covenant of indemnity shall continue in effect notwithstanding full payment of all sums due under this Agreement, or the satisfaction, discharge or termination of this Agreement in any manner whatsoever.

9. Builder's Warranty. Builder warrants the Equipment will be built in accordance with the requirements, specifications and standards set forth in Schedule A hereto and, except in cases of articles and materials specified by Vendee and not manufactured by the Builder, warrants the Equipment to be free from defects in material and workmanship under normal use and service. The liability of the Builder under this warranty shall be limited, as Builder may elect: (i) to repair of the defect at the Builder's plant at Portland, Oregon; or (ii) to replacement of the defective part; or (iii) to the cost of repair or replacement according to the Association of American Railroads Code of Rules Governing Conditions of and Repairs to Freight and Passenger Cars with Interchange of Traffic. The foregoing warranty of the Builder shall begin at the time of delivery of a unit of Equipment under this agreement and terminate one year after such delivery. This warranty is expressly in lieu of all other warranties expressed or implied on the part of the Builder. Builder neither assumes nor authorizes any person to assume for it any other warranty liability in connection with the construction and delivery of the Equipment.

Neither the inspection as provided in Article 2 nor any examination nor the acceptance of any units of Equipment as provided in Article 2 shall be deemed a waiver or a modification by the Vendee of any of its rights under this Article 9.

10. Assignments. All rights of the Builder under this Agreement may be assigned by Builder and reassigned by any assignee at any time. No assignment shall subject any assignee to, or relieve the Builder from, any obligations of the Builder to construct and deliver the Equipment or to respond to its warranties contained in Article 9 nor relieve Vendee of any of its obligations to Builder under Article 8.

Vendee represents, for the purpose of assurance to Assignee and for the purposes of inducing Assignee to take such assignment, that in the event of any assignment by the Builder, the rights of Assignee to any unpaid portion of the purchase price, together with interest thereon, shall not be subject to any defense, set-off, counterclaim or recoupment whatsoever arising out of any breach of any obligation of the Builder.

Upon any such assignment and the delivery of a counterpart or copy of such assignment to Vendee, such assignee shall by virtue of such assignment acquire all of the assignor's right, title and interest in and to the Equipment and this Agreement subject only to such reservations as may be contained in such an assignment. From and after such assignment and delivery of such counterpart or copy to Vendee, all payments to be made by Vendee hereunder shall, to the extent so assigned, be made to the assignee in such manner as it may direct.

11. Remedies. If at any time Vendee shall be in default of any obligation to pay the purchase price or indemnify the Builder, the Builder may take immediate possession of the Equipment without liability to return to the Vendee any sums theretofore paid and free from all claims whatsoever and may remove the Equipment from the use of the Vendee or any other person. For such purposes, Builder may enter upon the Vendee's premises or any other premises where the Equipment may be located, and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities of the Vendee.

If the Builder shall demand possession of the Equipment and shall reasonably designate a point for delivery to the Vendee, the Vendee shall, at its own expense, cause the Equipment to be moved to such point or points. At Builder's option, Builder may keep the Equipment at such point or points selected by it without charge or rent for storage until Builder shall have leased, sold or otherwise disposed of the Equipment, provided that Vendee's obligation to pay for such storage

shall not exceed 120 days. Upon application to any court of equity, the Builder shall be entitled to a decree of specific performance of this paragraph. Vendee hereby waives any claims against the Builder for damages in connection with any retaking of any units of Equipment in any reasonable manner.

Builder may elect to retain the Equipment in satisfaction of the entire indebtedness in respect of the purchase price and dispose of it as Builder shall deem fit. Builder shall give Vendee written notice within thirty days after an election to so dispose of the Equipment.

At any time while the Vendee is in default hereunder, Builder may upon reasonable notice to Vendee, sell any unit of Equipment free from any and all claims of the Vendee at public or private sale, provided that if the Vendee shall tender full payment of the total unpaid balance of the indebtedness, together with interest and expenses of the Builder in arranging the sale (including reasonable attorneys' fees,) the possession of and title to the property shall pass to the Vendee.

Every remedy specified herein shall be in addition to every other remedy now or hereafter existing at law or in equity. Every remedy may be exercised at any time and simultaneously and as often and in such order as the Builder may deem expedient. All powers and remedies shall be cumulative. The exercise of one shall not be a waiver of the right to exercise the right of any other. Acceptance of any payment after it shall have become due will not alter or affect the Vendee's obligations or the Builder's rights with respect to any subsequent payments.

12. Recording. Vendee will cause this agreement, any assignments hereof, and any amendments or supplements hereto to be filed and recorded with the Interstate Commerce Commission in accordance with section 20c of the Interstate Commerce Act. Vendee will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, deposit and record any and all further instruments required by law or reasonably requested by the Builder or Assignee for the purpose of proper protection to the satisfaction of the Builder or Assignee, of its title to the Equipment. Vendee will promptly furnish to the Builder certificates or other evidence of filing, registering, depositing and recording such documents.

13. Insurance. Vendee will maintain physical damage, fire and extended cover insurance with a reliable insurance company to the full insurable value of the Equipment. The extent of such coverage shall not be less than the unpaid purchase price. Upon demand, Vendee will furnish Builder with a copy of such insurance policies or a certificate of such insurance.

14. Law of Governing. Vendee warrants that its chief place of business and its chief executive offices are located in the state of ~~California~~. The terms of this agreement and all rights and obligations hereunder shall be governed by the state of California. BB
Utah. RC

15. Contingencies. Builder shall not be liable to Vendee for any loss or damage suffered as a result of Builder's failure to deliver or delay in delivering the Equipment where such failure or delay is caused by fire; flood, natural disaster, labor trouble (including strikes, slow-downs or walk-outs,) war, riot, civil disorder, embargo, government regulations or restrictions of any kind, expropriation of plant by federal or state authority, interruption of or delay in transportation, power failure, inability to obtain materials or supplies, accident, explosion, act of God or other causes of like or different character beyond the Builder's control.

16. Disclaimer of Consequential Damages. BUILDER SHALL NOT BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT. CONSEQUENTIAL DAMAGES SHALL INCLUDE LOSS OF USE, INCOME OR PROFIT, OR ANY OTHER ECONOMIC LOSS AND LOSS FROM PHYSICAL DAMAGE TO PROPERTY (INCLUDING PROPERTY HANDLED OR PROCESSED IN THE EQUIPMENT.)

17. Execution. This agreement may be executed in any number of counterparts and such counterparts together shall constitute one in the same contract.

18. The terms and conditions of Annex A hereto are hereby incorporated herein.

IN WITNESS WHEREOF, the parties have hereby executed this instrument.

FMC CORPORATION

[Corporate Seal]

By BR

Attest:

FIRST SECURITY BANK OF UTAH, N.A.,
As Trustee

[Corporate Seal]

By _____

Attest:

ANNEX A TO THE CONDITIONAL
SALE AGREEMENT

It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the representations, undertakings and agreements herein made on the part of the Vendee are each and every one of them made and intended not as personal representations, undertakings and agreements by First Security Bank of Utah, N.A., a national banking association, or for the purpose or with the intention of binding such national banking association personally but are made and intended for the purpose of binding only the Trust Estate as such term is defined in Section 1.02 of the Trust Agreement and this Agreement is executed and delivered by such national banking association solely in the exercise of the powers expressly conferred upon such national banking association as trustee under the Trust Agreement; and that no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against such national banking association or the Beneficiary (except as provided in Section 4.01 of the Trust Agreement) or on account of any representation, undertaking or agreement of such national banking association, as Vendee, or the Beneficiary (except as provided in Section 4.01 of the Trust Agreement) either expressed or implied, all such personal liability, if any, being expressly waived and released by the Builder and by all persons claiming by, through or under the Builder; provided, however, that the Builder or any person claiming by, through or under the Builder, making claim hereunder, may look to said Trust Estate for satisfaction of the same.

STATE OF ILLINOIS)

SS:

COUNTY OF COOK

On this 25th day of June 1976, before me personally
appeared B. K. van der, to me personally

known, who, being by me duly sworn, says that he is a officer of FMC Corporation, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its board of directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[Notarial Seal]

My Commission expires: Sept. 10, 1978

STATE OF UTAH)
) SS:
COUNTY OF SALT LAKE)

On this ____ day of _____, 1976, before me personally appeared _____, to me personally known, who, being by me duly sworn, says that he is an authorized officer of First Security Bank of Utah, N.A., a national banking association, that one of the seals affixed to the foregoing instrument is the seal of said association, that said instrument was signed and sealed on behalf of said association by authority of its board of directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said association.

Notary Public

[Notarial Seal] .

My Commission expires:

SCHEDULE A TO CONDITIONAL SALE AGREEMENT

<u>Type</u>	<u>Quantity</u>	<u>Lessee's or Sublessee's Road Numbers (Both Inclusive)</u>
70-ton boxcars (FMC Corporation specification #17774, revision #3, dated June 9, 1977.)	100	APA 1850-1949*
100-ton boxcars (FMC Corporation, specification #17775)	100	APA 1700-1799*

*Road Number of The Apache Railway Co.

CONDITIONAL SALE AGREEMENT

This Conditional Sale Agreement is made as of June 22, 1976 between FMC Corporation, a Delaware corporation (hereinafter called Builder,) and First Security Bank of Utah, N.A., a national banking association, not in its individual capacity but acting solely as Trustee under a Trust Agreement dated as of the date hereof with FMC Finance Corporation (said trust company, so acting, being hereinafter called the Vendee and FMC Finance Corporation being hereinafter called the Beneficiary).

Whereas, Vendee desires to purchase from Builder and Builder desires to sell to Vendee 200 boxcars;

Whereas, the parties anticipate this Agreement will be assigned to a third party (hereinafter called the Assignee) and subsequently amended and modified by the Vendee and Assignee;

NOW THEREFORE, the parties agree:

1. Construction and Sale. Builder will construct the boxcars as set forth on Schedule A hereto, (such boxcars being hereinafter called the Equipment.) Builder will sell and deliver to Vendee and Vendee will purchase from Builder, accept delivery and pay for the Equipment. The design, quality and component parts of each unit of Equipment shall conform at delivery to all Department of Transportation and Interstate Commerce Commission requirements and specifications and to all standards recommended by the Association of American Railroads reasonably interpreted as being applicable to equipment of the character of such units. The Equipment will meet the Builder's Specifications as set forth on Schedule A hereto.

2. Inspection and Delivery. Builder will begin construction of the Equipment promptly and will begin delivery as soon as practicable. Builder will deliver the Equipment to Holbrook, Arizona.

During construction, the Equipment will be subject to inspection and approval by the authorized inspectors of the Vendee. Builder will grant the inspectors reasonable access to its plant. Builder will submit each unit to an inspector for inspection. If each such unit conforms to the specifications, requirements and standards applicable thereto, the inspector shall execute and deliver to the Builder a Certificate of Acceptance stating that such unit has been inspected and accepted on behalf of Vendee and is marked in accordance with Article 6 hereof, provided, however, that the Builder shall not thereby be relieved of its warranty provided in Article 9.

Upon delivery of each unit, the Railroad will assume the risk of any loss or damage to or destruction of such unit.

\$ 36,000
\$ 3,400,000
3. Purchase Price and Payment. The price will not exceed ~~\$35,750~~ per unit nor ~~\$3,575,000~~ per 100 units for the 100 ton boxcars and will not exceed ~~\$33,500~~ per unit nor ~~\$3,350,000~~ per 100 units for the 70 ton boxcars, which price includes any freight charges. The purchase price shall be payable on demand, but not before four days after delivery of all of the Equipment. If payment shall not be then demanded, Vendee will pay interest at ten per cent per annum of the unpaid balance of the purchase price. *\$ 3,600,000*
\$ 34,000
RC

If Builder assigns the right to receive the payments to be made by the Vendee, the Assignee thereof may request the Vendee to make, and the Vendee shall make, such payment to Assignee.

4. Taxes. Vendee will pay all local, state, federal or foreign taxes (other than net income, gross receipts, [except gross receipts taxes in the nature of or in lieu of sales or use taxes,] excess profits and similar taxes) or license fees, assessments, charges, fines, or penalties hereafter levied or imposed upon or in connection with or measured by this agreement or any sale, use, payment, shipment, delivery or transfer of title under the terms hereof. Vendee will keep the Equipment free and clear of all such impositions which might in any way affect the title of the Builder.

5. Title to the Equipment. Builder hereby retains full legal title to and property in the Equipment until the purchase price shall have been paid in full.

Any and all additions to the Equipment, and any and all parts installed on and additions and replacements made to any unit of Equipment shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and included in the term, "the Equipment," as used in this Agreement.

Except as otherwise specifically provided herein, when Builder shall have been paid the purchase price in full, together with interest and all other payments as herein provided, and all Vendee's obligations herein contained shall have been performed, absolute right to possession of, title to, and property in the Equipment shall pass to and vest in the Vendee without further

transfer or action on the part of Builder. At such time Builder shall, at the request and expense of Vendee, execute to Vendee a bill of sale for the Equipment as is, where is, and without warranty of any kind except only that the Equipment is free from all liens and incumbrances created by Builder.

6. Marking of the Equipment. The Vendee will cause each unit of the Equipment to be numbered with its identifying number and the number of the ICC filing relating thereto. The Vendee will keep and maintain plainly, distinctly, permanently and conspicuously marked on each side of each unit, in letters not less than one inch in height, the words:

Owned by a Company under a Security Agreement filed under the Interstate Commerce Act, Section 20c

or other appropriate markings approved by the Builder. Vendee will make the changes thereof and additions thereto which may be required by law in order to protect the Builder's title to and property in the Equipment and its rights under this agreement. Vendee will not operate any unit until such markings have been made thereon and will replace promptly any such marking which may be removed, defaced or destroyed.

The identifying numbers shall be those set forth in Schedule A to this Agreement. Vendee will not permit the identifying number of any unit of Equipment to be changed except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been filed with Builder and filed, recorded or deposited on behalf of Vendee in all public offices where this Agreement shall have been filed, recorded or deposited. Except as provided in this paragraph, Vendee will not allow the name of any person, association or corporation to be placed on any unit of Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Lessee may cause the equipment to be lettered with the names or initials or other insignia customarily used by Lessee, its affiliates or its sub-lessees on railroad equipment used by them of the same or a similar type for convenience of identification.

7. Maintenance: Complicance with Laws and Rules. Vendee will cause the Equipment to be maintained in good order and repair at its own expense. Vendee will comply in all respects with all laws of the jurisdictions in which its operations involving the Equipment may extend, with the interchange rules of the Association of

American Railroads, and with all lawful rules of the Department of Transportation, Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment. If any such laws or rules require the alteration of any part on any unit of Equipment, the Vendee will conform therewith at its own expense.

8. Indemnities. Vendee will indemnify, protect and hold harmless Builder from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause, and expenses in connection therewith, including counsel fees, arising out of the retention by Builder of title to the Equipment or the use or operation thereof by Vendee, except any losses, damages, injuries, liabilities, claims and demands arising out of any tort, breach of warranty or failure to perform any covenant hereunder by Builder. This covenant of indemnity shall continue in effect notwithstanding full payment of all sums due under this Agreement, or the satisfaction, discharge or termination of this Agreement in any manner whatsoever.

9. Builder's Warranty. Builder warrants the Equipment will be built in accordance with the requirements, specifications and standards set forth in Schedule A hereto and, except in cases of articles and materials specified by Vendee and not manufactured by the Builder, warrants the Equipment to be free from defects in material and workmanship under normal use and service. The liability of the Builder under this warranty shall be limited, as Builder may elect: (i) to repair of the defect at the Builder's plant at Portland, Oregon; or (ii) to replacement of the defective part; or (iii) to the cost of repair or replacement according to the Association of American Railroads Code of Rules Governing Conditions of and Repairs to Freight and Passenger Cars with Interchange of Traffic. The foregoing warranty of the Builder shall begin at the time of delivery of a unit of Equipment under this agreement and terminate one year after such delivery. This warranty is expressly in lieu of all other warranties expressed or implied on the part of the Builder. Builder neither assumes nor authorizes any person to assume for it any other warranty liability in connection with the construction and delivery of the Equipment.

Neither the inspection as provided in Article 2 nor any examination nor the acceptance of any units of Equipment as provided in Article 2 shall be deemed a waiver or a modification by the Vendee of any of its rights under this Article 9.

10. Assignments. All rights of the Builder under this Agreement may be assigned by Builder and reassigned by any assignee at any time. No assignment shall subject any assignee to, or relieve the Builder from, any obligations of the Builder to construct and deliver the Equipment or to respond to its warranties contained in Article 9 nor relieve Vendee of any of its obligations to Builder under Article 8.

Vendee represents, for the purpose of assurance to Assignee and for the purposes of inducing Assignee to take such assignment, that in the event of any assignment by the Builder, the rights of Assignee to any unpaid portion of the purchase price, together with interest thereon, shall not be subject to any defense, set-off, counterclaim or recoupment whatsoever arising out of any breach of any obligation of the Builder.

Upon any such assignment and the delivery of a counterpart or copy of such assignment to Vendee, such assignee shall by virtue of such assignment acquire all of the assignor's right, title and interest in and to the Equipment and this Agreement subject only to such reservations as may be contained in such an assignment. From and after such assignment and delivery of such counterpart or copy to Vendee, all payments to be made by Vendee hereunder shall, to the extent so assigned, be made to the assignee in such manner as it may direct.

11. Remedies. If at any time Vendee shall be in default of any obligation to pay the purchase price or indemnify the Builder, the Builder may take immediate possession of the Equipment without liability to return to the Vendee any sums theretofore paid and free from all claims whatsoever and may remove the Equipment from the use of the Vendee or any other person. For such purposes, Builder may enter upon the Vendee's premises or any other premises where the Equipment may be located, and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities of the Vendee.

If the Builder shall demand possession of the Equipment and shall reasonably designate a point for delivery to the Vendee, the Vendee shall, at its own expense, cause the Equipment to be moved to such point or points. At Builder's option, Builder may keep the Equipment at such point or points selected by it without charge or rent for storage until Builder shall have leased, sold or otherwise disposed of the Equipment, provided that Vendee's obligation to pay for such storage

shall not exceed 120 days. Upon application to any court of equity, the Builder shall be entitled to a decree of specific performance of this paragraph. Vendee hereby waives any claims against the Builder for damages in connection with any retaking of any units of Equipment in any reasonable manner.

Builder may elect to retain the Equipment in satisfaction of the entire indebtedness in respect of the purchase price and dispose of it as Builder shall deem fit. Builder shall give Vendee written notice within thirty days after an election to so dispose of the Equipment.

At any time while the Vendee is in default hereunder, Builder may upon reasonable notice to Vendee, sell any unit of Equipment free from any and all claims of the Vendee at public or private sale, provided that if the Vendee shall tender full payment of the total unpaid balance of the indebtedness, together with interest and expenses of the Builder in arranging the sale (including reasonable attorneys' fees,) the possession of and title to the property shall pass to the Vendee.

Every remedy specified herein shall be in addition to every other remedy now or hereafter existing at law or in equity. Every remedy may be exercised at any time and simultaneously and as often and in such order as the Builder may deem expedient. All powers and remedies shall be cumulative. The exercise of one shall not be a waiver of the right to exercise the right of any other. Acceptance of any payment after it shall have become due will not alter or affect the Vendee's obligations or the Builder's rights with respect to any subsequent payments.

12. Recording. Vendee will cause this agreement, any assignments hereof, and any amendments or supplements hereto to be filed and recorded with the Interstate Commerce Commission in accordance with section 20c of the Interstate Commerce Act. Vendee will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, deposit and record any and all further instruments required by law or reasonably requested by the Builder or Assignee for the purpose of proper protection to the satisfaction of the Builder or Assignee, of its title to the Equipment. Vendee will promptly furnish to the Builder certificates or other evidence of filing, registering, depositing and recording such documents.

13. Insurance. Vendee will maintain physical damage, fire and extended cover insurance with a reliable insurance company to the full insurable value of the Equipment. The extent of such coverage shall not be less than the unpaid purchase price. Upon demand, Vendee will furnish Builder with a copy of such insurance policies or a certificate of such insurance.

14. Law of Governing. Vendee warrants that its chief place of business and its chief executive offices are located in the state of California. The terms of this agreement and all rights and obligations hereunder shall be governed by the state of California.

Utah. RE

15. Contingencies. Builder shall not be liable to Vendee for any loss or damage suffered as a result of Builder's failure to deliver or delay in delivering the Equipment where such failure or delay is caused by fire, flood, natural disaster, labor trouble (including strikes, slow-downs or walk-outs,) war, riot, civil disorder, embargo, government regulations or restrictions of any kind, expropriation of plant by federal or state authority, interruption of or delay in transportation, power failure, inability to obtain materials or supplies, accident, explosion, act of God or other causes of like or different character beyond the Builder's control.

16. Disclaimer of Consequential Damages. BUILDER SHALL NOT BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT. CONSEQUENTIAL DAMAGES SHALL INCLUDE LOSS OF USE, INCOME OR PROFIT, OR ANY OTHER ECONOMIC LOSS AND LOSS FROM PHYSICAL DAMAGE TO PROPERTY (INCLUDING PROPERTY HANDLED OR PROCESSED IN THE EQUIPMENT.)

17. Execution. This agreement may be executed in any number of counterparts and such counterparts together shall constitute one in the same contract.

18. The terms and conditions of Annex A hereto are hereby incorporated herein. IN WITNESS WHEREOF, the parties have hereby executed this instrument.

FMC CORPORATION

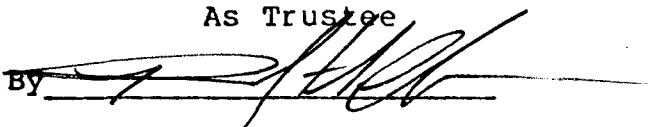
[Corporate Seal]

By _____

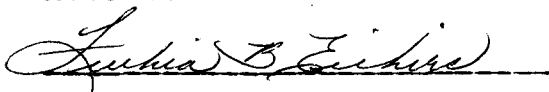
Attest:

FIRST SECURITY BANK OF UTAH, N.A.,
As Trustee

[Corporate Seal]

By 

Attest:



STATE OF ILLINOIS)

) SS.

COUNTY OF COOK)

On this _____ day of _____, 1976, before me personally

appeared _____, to me personally

known, who, being by me duly sworn, says that he is a

of FMC Corporation, that one

of the seals affixed to the foregoing instrument is the

corporate seal of said corporation, that said instrument was

signed and sealed on behalf of said corporation by authority

of its board of directors and he acknowledged that the

execution of the foregoing instrument was the free act

and deed of said corporation.

Notary Public

(Notarial Seal)

My Commission expires:

STATE OF UTAH)
) SS.
COUNTY OF SALT LAKE)

On this 25 day of June, 1976, before me personally appeared Robert S. Clark to be personally known, who, being by me duly sworn, says that he is an authorized officer of First Security Bank of Utah, N.A., a national banking association, that one of the seals affixed to the foregoing instrument is the seal of said association, that said instrument was signed and sealed on behalf of said association by authority of its board of directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said association.


Notary Public

(Notarial Seal)

My Commission expires:

11-18-79

SCHEDULE A TO CONDITIONAL SALE AGREEMENT

<u>Type</u>	<u>Quantity</u>	<u>Lessee's or Sublessee's Road Numbers (Both Inclusive)</u>
70-ton boxcars (FMC Corporation specification #17774, revision #3, dated June 9, 1977.)	100	APA 1850-1949*
100-ton boxcars (FMC Corporation, specification #17775)	100	APA 1700-1799*

*Road Number of The Apache Railway Co.

ANNEX A TO THE CONDITIONAL
SALE AGREEMENT

It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the representations, undertakings and agreements herein made on the part of the Vendee are each and every one of them made and intended not as personal representations, undertakings and agreements by First Security Bank of Utah, N.A., a national banking association, or for the purpose or with the intention of binding such national banking association personally but are made and intended for the purpose of binding only the Trust Estate as such term is defined in Section 1.02 of the Trust Agreement and this Agreement is executed and delivered by such national banking association solely in the exercise of the powers expressly conferred upon such national banking association as trustee under the Trust Agreement; and that no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against such national banking association or the Beneficiary (except as provided in Section 4.01 of the Trust Agreement) or on account of any representation, undertaking or agreement of such national banking association, as Vendee, or the Beneficiary (except as provided in Section 4.01 of the Trust Agreement) either expressed or implied, all such personal liability, if any, being expressly waived and released by the Builder and by all persons claiming by, through or under the Builder; provided, however, that the Builder or any person claiming by, through or under the Builder, making claim hereunder, may look to said Trust Estate for satisfaction of the same.